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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 764

STATE OF MINNESOTA, PETITIONER,

vs.

GEORGE BLASIUS, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The Petition of the State of Minnesota respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

Your petitioner, the State of Minnesota, respectfully states that it is aggrieved by the judgment of the Supreme Court of the State of Minnesota rendered on the 9th day of December, 1932, in a suit, wherein this peti-

tioner sought to enforce collection of delinquent personal property taxes levied upon eleven head of cattle owned by the respondent. The cattle in question, coming from points either without or within the State, were consigned to the South St. Paul stockyards for sale (R. 6). Respondent, engaged in the business of a dealer in livestock at said stockyards (R. 5), bought said cattle after they were unloaded in the stockyards and put up for sale, and placed them in pens leased by him from the Stockyards Company (R. 17). At the opening of business on May 1, 1929, when the cattle were assessed for taxation, they were owned by respondent, had not been entered with any common carrier for shipment to any point (R. 7), no contract for sale or any other arrangement for sale or shipment had been made, and their final destination was unknown. Respondent subsequently sold seven of the eleven head of cattle in question on May 1st, and the other four head on the next succeeding day, May 2nd (R. 7-8). These sales were made to third parties, who in turn shipped the cattle to points outside the State (R. 7).

The trial court originally made findings disallowing the tax on the cattle (R. 10). Petitioner's subsequent motion to amend the findings was granted, and the court thereupon held the cattle taxable (R. 14). From judgment entered pursuant to these findings (R. 21), respondent appealed to the Supreme Court of the State of Minnesota, which reversed the trial court and held that the cattle were not taxable as being in interstate commerce (R. 22-28).

B.

Reasons Relied on for the Allowance of the Writ.

Importance of Question Involved.

The question of the taxability of the cattle in question is one of great importance not only to the State of Minnesota but to those other States in which stockyards such as the South St. Paul Stockyards are located. Although in the case at bar only eleven head of cattle are involved, and the amount of tax in dispute is therefore relatively small, it must be borne in mind that thousands of cattle are daily shipped in to these stockyards (R. 7), and that consequently thousands of dollars will be lost to the State of Minnesota and its subdivisions if it be not allowed to tax those cattle owned and in the possession of licensed dealers in the stockyards on the day of assessment. It must also be borne in mind that if the decision of the Supreme Court of the State of Minnesota be allowed to stand, the exemption from taxation therein granted could, by the same reasoning, be extended to the valuable supplies of meat products temporarily located in the packing plants at the Stockyards awaiting shipment to points beyond the borders of the State, and to the valuable personal property used by the Stockyards Companies themselves in conducting this business.

It is, therefore, of the utmost importance that the question be finally determined by this Court.

Conflict of Decisions.

The decision of the Supreme Court of the State of Minnesota, in the case at bar, in holding that the cattle in question had not sufficiently come to rest to subject them to the taxing power of the State of Minnesota, is contrary to and in conflict with the decision of this Court in *General Oil Co.* v. *Crain* (1907), 209 U. S. 211, 28 Sup. Ct. 475, 52 L. Ed. 755, and other applicable decisions of this Court. The two cases of *Swift and Co.* v. *United States* (1904), 196 U. S. 375, 49 L. Ed. 518, and *Stafford* v. *Wallace* (1921), 258 U. S. 495, 42 Sup. Ct. 397, 66 L. Ed. 73, largely relied upon by the Supreme Court of the State of Minnesota to sustain its holding, involve the power of the Federal Government over Interstate Commerce rather than the limit of the State's power over Commerce among the States, and hence are of little determinative value in deciding the case at bar. The other cases cited by the court in support of its holding are all clearly distinguishable on their facts from the case at bar.

WHEREFORE your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the Seal of this Honorable Court directed to the Supreme Court of the State of Minnesota, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 29017, *State of Minnesota, Respondent,* v. *George Blasius, Appellant,* and that the judgment of the Supreme Court of the State of Minnesota may be

reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just, and your petitioner will ever pray.

STATE OF MINNESOTA,
Harry H. Peterson, the Attorney
General of the State of Minnesota,
State Capitol, St. Paul, Minnesota.
H. E. STASSEN,
County Attorney of Dakota County,
South St. Paul, Minnesota,
Attorneys for Petitioner.

Dated: 28th January, 1933.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 764

STATE OF MINNESOTA, PETITIONER,

vs.

GEORGE BLASIUS, RESPONDENT.

BRIEF IN SUPPORT OF WRIT OF CERTIORARI.

I.

Opinion of the Court Below.

The opinion of the Supreme Court of the State of Minnesota appears in — Minn. —, 245 N. W. 612, and is set forth verbatim in the Record at page 22.

II.

Jurisdiction.

1. The appellate and supervisory jurisdiction of the Supreme Court of the United States is invoked under Section 237 (*b*), Judicial Code of the United States

(28) U. S. C. A., Sec. 344 (*b*)), to correct error of the Supreme Court of the State of Minnesota in the case cited in the last preceding paragraph.

2. Final judgment of the Supreme Court of the State of Minnesota herein was entered on the 3rd day of January, 1933 (R. 28).

3. The case at bar comes within the appellate jurisdiction of this Court under Section 237 (*b*) of the Judicial Code by reason of the respondent's claim that the cattle in question were exempt from local taxation as being in the current of interstate commerce (R. 3), thus drawing in question the rights, privileges and immunities of said respondent under the Federal Constitution and Laws. The trial court held that the cattle had sufficiently come to rest to take them out of the current of interstate commerce and subject them to local taxation (R. 19). The Supreme Court of the State of Minnesota held that the trial court erred in so holding and reversed judgment of the trial court (R. 22).

Although no decisions have been found to directly support the appellate and supervisory jurisdiction of this Court under the above section of the Judicial Code, the language of the section clearly seems broad enough to support jurisdiction.

See U. S. Code Annotated, Sec. 344—Footnote 241. The section reads as follows:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any

cause * * * where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied."

III.

Statement of Case.

This was an action brought by your petitioner to enforce collection of delinquent personal property taxes levied upon eleven head of cattle owned by the respondent. The cattle in question, coming from points either without or within the State, were consigned to the South Saint Paul stockyards for sale (R. 6). Respondent, engaged in the business of a dealer in livestock at said stockyards (R. 5), bought said cattle after they were unloaded in the stockyards and put up for sale, and placed them in pens leased by him from the Stockyards Company (R. 17). At the opening of business on May 1, 1929, when the cattle were assessed for taxation, they were owned by respondent, had not been entered with any common carrier for shipment to any point (R. 7), no contract for sale or any other arrangement for sale or shipment had been made, and their final destination was unknown. Respondent sold seven of the eleven head of cattle in question on May 1st, and the other four head on the next succeeding day, May 2nd (R. 7-8). These

sales were made to third parties, who in turn shipped the cattle to points outside the State (R. 7-8).

The trial court originally made findings disallowing the tax on the cattle (R. 10). Petitioner's subsequent motion to amend the findings was granted, and the court thereupon held the cattle taxable (R. 14). From judgment entered pursuant to these findings (R. 21), respondent appealed to the Supreme Court of the State of Minnesota, which reversed the trial court and held that the cattle were not taxable as being in interstate commerce (R. 22-28).

IV.

Specifications of Error.

1. The Supreme Court of the State of Minnesota erred in reversing the judgment of the trial court.

2. The Supreme Court of the State of Minnesota erred in holding that the cattle in question had not sufficiently come to rest at the time of the tax levy to break the continuity of their interstate journey and subject them to the taxing power of the State of Minnesota.

3. The Supreme Court of the State of Minnesota erred in applying the rule laid down by those cases involving the power of the Federal Government over interstate commerce, to the case at bar, which involves the limit of the State's power over commerce among the States.

4. The Supreme Court of the State of Minnesota erred in holding that the cattle in question were not

taxable, even assuming that they were in interstate commerce at the time of the tax levy.

V.

ARGUMENT.

Summary of Argument.

Your petitioner contends that the tax involved in the case at bar was valid, and that the final judgment of the Supreme Court of the State of Minnesota, in reversing the judgment of the lower court sustaining the tax, is erroneous for the following reasons:

A. The cattle in question had sufficiently come to rest at the time of the tax levy to break the continuity of their interstate journey and subject them to the taxing power of the State of Minnesota.

B. The rule laid down by the cases involving the power of the Federal Government over interstate commerce is not applicable to the case at bar, which involves the limit of the State's power over commerce among the States.

C. Even assuming that the cattle were in interstate commerce at the time of the tax levy, the tax was valid, since it was so indirect as not to amount to a regulation of interstate commerce.

Point A.

(Assignments of Errors 1 and 2.)

The cattle in question had sufficiently come to rest at the time of the tax levy to break the continuity of

their interstate journey, and subject them to the taxing power of the State of Minnesota.

It is a well settled rule of law that property which has temporarily come to rest is subject to local taxation.

1 *Cooley, Taxation,* Sec. 374.
12 *Corpus Juris, Commerce,* Sec. 128.
5 *R. C. L. Commerce,* Sec. 19.
American Steel & Wire Co. v. *Speed* (1903), 192 U. S. 500, 24 Sup. Ct. 365, 48 L. Ed. 538.
See *Kelly* v. *Rhoads* (1898), 188 U. S. 1, 23 Sup. Ct. 259, 47 L. Ed. 259.

Thus, it has been held in the case of shipments of coal in interstate commerce, that where the coal is dumped in a yard in an intermediate State to facilitate its further shipment, it has come to rest long enough to interrupt the continuity of the interstate journey, and becomes subject to local taxation.

Susquehanna Coal Co. v. *South Amboy* (1913), 228 U. S. 665, 33 Sup. Ct. 712, 57 L. Ed. 1015.

See also,

Brown v. *Houston* (1885), 114 U. S. 622, 29 L. Ed. 257.
Pittsburgh & S. Coal Co. v. *Bates* (1894), 156 U. S. 577, 39 L. Ed. 538, 15 Sup. Ct. 415.

Similarly, in the case of shipments of grain in interstate commerce, it has been held that where the grain is unloaded for weighing, cleaning, inspecting, etc., it loses its immunity from local taxation, even although

the intention of the shipper was to send it on immediately in accordance with the original contracts of transportation.

Bacon v. *Illinois* (1913), 227 U. S. 504, 33 Sup. Ct. 299, 57 L. Ed. 615.

In this case, the court said:

> "But neither the fact that the grain had come from outside the State nor the intention of the owner to send it to another State and there to dispose of it can be deemed controlling when the taxing power of the State of Illinois is concerned. The property was held by the plaintiff in error in Chicago for his own purposes and with full power of disposition. It was not being actually transported and it was not held by carriers for transportation. The plaintiff in error had withdrawn it from the carriers. The purpose of the withdrawal did not alter the fact that it had ceased to be transported and had been placed in his hands. He had the privilege of continuing the transportation under the shipping contracts, but of this he might avail himself or not as he chose. He might sell the grain in Illinois or forward it as he saw fit. It was in his possession with the control of absolute ownership. He intended to forward the grain after it had been inspected, graded, etc., but this intention, while the grain remained in his keeping and before it had been actually committed to the carriers for transportation, did not make it immune from local taxation."

Likewise, in the case of shipments of oil in interstate commerce, it has been held that where the oil is run into tanks in order to facilitate its further ship-

ment, it has come to rest temporarily, and becomes subject to local taxation.

General Oil Co. v. Crain (1907), 209 U. S. 211, 28 Sup. Ct. 475, 52 L. Ed. 755.

Gulf Refining Co. v. *Phillips* (1926), 11 F. (2d) 967.

In the *Crain* case, a Tennessee corporation shipped oil from Pennsylvania and Ohio to Memphis, Tennessee. The oil was shipped in tank cars. At Memphis, it was transferred to large tanks. The sole purpose of this transfer was to place the oil in smaller vessels in order the better to meet the requirements of orders from States farther West. The oil was kept in the tanks at most only a few days. While there, an inspection fee was charged. The court had no difficulty in holding that the oil at the time was not property in interstate commerce, and sustained the imposition of the fee.

The Supreme Court of the State of Minnesota in its opinion stated that the *Crain* case, while not specifically overruled, is no longer considered to be of controlling weight, and that there has since been a liberal construction of what is continuity of the interstate journey. In support of this statement the court cited the case of *Carson Petroleum Co.* v. *Vial* (1921), 279 U. S. 95, 49 Sup. Ct. 292, 73 L. Ed. 626. The facts of this case show that orders for the oil had already been filled and that the oil was stored only to await vessels to take it to foreign ports, or to accumulate enough oil to fill a ship. This manifestly was not a break in the continuity of the journey. It was but a delay in

the continuity of movement incidental to that journey —a necessary means of securing prompt transshipment. *Only the mechanics of transportation were involved.*

See *Hughes Bros. Timber Co.* v. *Minnesota*, (1926) 272 U. S. 469, 71 L. Ed. 259, reversing *State* v. *Hughes Bros. Timber Co.*, (1925) 163 Minn. 4, 203 N. W. 436, where the court, in holding that certain logs being driven to booms, there to await the opening of transportation, were not taxable, said:

> "The delays in the continuity of movement were only incidental to the journey and the necessary change in the mode of transportation by which the logs were carried from a place in one State to a place agreed upon in another."

But there is a distinction between this and the case where something more than the mechanics of transportation is involved. This was pointed out by the Maryland Court in *Myers* v. *Baltimore County*, (1896) 83 Md. 385, 35 Atl. 144, the facts of which case are almost identical to those of the case at bar. Plaintiffs, cattle dealers offcing at the Baltimore stockyards, bought cattle as they came into the stockyards from the western states, and shipped at least two-thirds of them on to buyers in other states. The cattle rarely remained in the stockyards for more than a day. Certain of these cattle were taxed by the local authorities. In upholding the tax, the court said:

> "We cannot hold in this case that at the period of assessment any of these cattle were in the course of transportation. In the regular

course of business the cattle purchased by the appellants are shipped to themselves in Baltimore, to be there disposed of as they may deem most advantageous to their own interests. *Once at the Union Stockyards, the transportation ceases, until, at the pleasure of the appellants, they are again shipped. They are not held there to await a steamer or a train, but for the convenience of the owners, in order that they may determine which of them they will sell in the home market and which they will ship to the foreign, or any other disposition they may choose.* * * * The property, then, not being in transit, either through the state, or from a point in the state to a point outside, is 'property within the state,' within the meaning of the statute." (Italics ours.)

See also, *State* v. *Burlington Lumber Co.*, (1912) 118 Minn. 329, 136 N. W. 1033, where the court, in sustaining a tax on logs which had been stopped at a boom, there to be assembled for shipment out of the state, said:

> "It is sufficient to say that the boom of the St. Paul Boom Co. appears to have been the place of assembling the logs for their final preparation for shipment, *as distinguished from a mere way or transfer station on a continuous, unbroken journey;* and such being the case, it must be held that the interstate transit did not begin until the deliveries to the steamer on May 2 and 6, respectively." (Italics ours.)

It is submitted that there is a marked distinction between the situation where the particular objects sought to be taxed have come to rest temporarily to

suit the convenience of the owners, and the situation where they have not come to rest at all, or have come to rest only to await the coming of a steamer or train or for some other reason purely incidental to the journey. It is significant that this Court's liberality in construing what is continuity of the interstate journey, referred to by the Minnesota Court, is confined to those cases involving the latter type of situation. In the former type of situation this Court has repeatedly held that the continuity of the interstate journey is broken.

Susquehanna Coal Co. v. *South Amboy, supra.*
Bacon v. *Illinois, supra.*
General Oil Co. v. *Crain, supra.*

The facts of the case at bar, it is submitted, bring it within the former situation. Something more than the mechanics of transportation was involved. The cattle were shipped to the stockyards to be there sold and resold. Neither the dealer in the stockyards who was to buy them in the first instance, nor the ultimate buyer, was known at the time the original shipment was made (R. 6). After buying the cattle, the dealer kept them in pens assigned to him at his pleasure until he sold them to third party purchasers (R. 17).

By reason of these distinguishing factors, it is submitted that there was, in the case at bar, a very definite break in the continuity of the interstate journey.

Point B.

(Assignment of Errors 1 and 3.)

The rule laid down by the cases involving the power of the Federal Government over interstate commerce is not applicable to the case at bar, which involves the limit of the state's power over commerce among the states.

The Supreme Court of the State of Minnesota based its decision very largely upon language used in the two cases of *Swift and Co.* v. *United States,* (1904) 196 U. S. 375, 49 L. Ed. 519, and *Stafford* v. *Wallace,* (1921) 258 U. S. 495, 42 Sup. Ct. 397, 66 L. Ed. 735. Both of these cases involve the power of the federal government over interstate commerce rather than the limit of the state's power over commerce among the states. That there is a distinction between the two types of cases is well brought out in the case of *Bacon* v. *Illinois,* (1913) 227 U. S. 504, 33 Sup. Ct. 299, 57 L. Ed. 615, where the court said:

> "The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with this paramount authority."

In both the *Swift and Co.* and the *Stafford* v. *Wallace* cases, the decisions in the tax cases were urged by the packers as a basis for their contention that the

Federal Government should not be permitted to interfere in the stockyards, and this distinction between Federal regulation and State taxation was clearly made by the court. In the former case the court said (at p. 400):

> "But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissible is beyond the scope of interference by Congress in cases where such interference is deemed necessary for the protection of commerce among the states."

And in the latter case, the court said (at p. 525):

> "The other cases relied on by appellants are less relevant to this discussion than the *Anderson* and *Hopkins* cases. Some of them are tax cases. As to them it is well to bear in mind the words of the court in the *Swift* case (p. 400):
>
> 'But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissible is beyond the scope of interference by Congress in cases where such interference is deemed necessary for the protection of commerce among the states.'"

From these quotations it can be seen that the United States Supreme Court expressly refused to follow the tax cases in these cases involving the power of the Federal Government over interstate commerce, and explicitly distinguished the two types of cases. It would logically seem to follow that these decisions cannot be used or followed in turning back and changing the established rules in the tax cases.

It is true that the court in the *Swift* case went on to say by way of dictum:

> "It should be added that the cattle in the stockyards are not at rest even to the extent that was held sufficient to warrant taxation in *American Steel & Wire Co.* v. *Speed*, 192 U. S. 500, 48 L. Ed. 538, 24 Sup. Ct. Rep. 365."

But in view of the fact that this statement was only *obiter dictum*, and in view of the further fact that since the decision in the *Swift* case the Supreme Court in analogous situations has directly held that the object sought to be taxed has come to rest sufficiently to be subject to local taxation,

> *Susquehanna Coal Co.* v. *South Amboy* (1913), 228 U. S. 665, 33 Sup. Ct. 712, 57 L. Ed. 1015 (coal).
>
> *Bacon* v. *Illinois* (1913), 227 U. S. 504 (grain).
>
> *General Oil Co.* v. *Crain* (1907), 209 U. S. 211, 28 Sup. Ct. 475, 52 L. Ed. 755 (oil).

it is submitted that this statement can be given very little, if any, weight.

Point C.

(Assignment of Errors 1 and 4.)

Even assuming that the cattle were in interstate commerce at the time of the tax levy, the tax was valid, since it was so indirect as not to amount to a regulation of interstate commerce.

The court in *Swift and Co.* v. *United States, supra*, said:

> "But it may be that the question of taxation does not depend upon whether the article taxed may or may not be said to be in the course of commerce between the states, but depends on whether the tax so far affects that commerce as to amount to a regulation of it."

Although this is only dictum, it finds support in the case of *U. S. Fidelity, etc., Co.* v. *Kentucky* (1913), 231 U. S. 394, 34 Sup. Ct. 122, 58 L. Ed. 283, where the court, in upholding a privilege tax on conducting certain commercial agencies, said:

> "To warrant interference (by the courts) with the exercise of the taxing power of a State on the ground that it obstructs or hampers interstate commerce, it must appear that the burden is direct and substantial."

Assuming, for the moment, then, that the cattle were in interstate commerce at the time the tax was levied, does the tax so far affect that interstate commerce as to amount to a regulation of it? In *Stafford* v. *Wallace, supra,* the following language of the court appears:

> "Moreover, it will be noted that even in the tax cases, where the tax is directed against a commodity in an actual flowing and constant stream out of the state, from which the owner may withdraw part of it for use or sale in the state before it reaches the state border, we have held that a tax on the flow is a burden on interstate commerce which the state may not impose because such flow in interstate commerce is an

established course of business. *United Fuel & Gas Co.* v. *Hallanan*, 257 U. S. 277; *Eureka Pipe Line Co.* v. *Hallanan*, 257 U. S. 265."

It is to be noted, however, that in both cases relied upon by the court as a basis for this statement, the tax was on the *flow* of the oil or gas. In the *Eureka Pipe Line Co.* case, the oil was taxed under a statute forbidding engaging in the business of transporting petroleum or gas in pipe lines without the payment of a tax of two cents for each barrel of oil transported. In the *United Fuel Gas Co.* case, gas was taxed under the same sort of statute. Such a tax, it can readily be seen, does amount to a regulation of interstate commerce. If the State of Minnesota should attempt to place a tax on every head of cattle entering or leaving the South St. Paul stockyards, such a tax, it is submitted, would be somewhat analogous to those involved in the *Eureka Pipe Line Co.* and *United Fuel Gas Co.* cases. *On the other hand, a mere personal property tax such as that involved in the instant case, imposed alike upon all property situate in the State,* can hardly be said to impose a direct and substantial burden upon interstate commerce, and is clearly not analogous to those involved in the *Eureka Pipe Line Co.* and *United Fuel Gas Co.* cases.

Conclusion.

It is therefore respectfully submitted that the case at bar is one calling for the exercise, by this Court, of its supervisory powers to correct error of the Supreme Court of the State of Minnesota in deciding a Federal

question of substance in a way not in accord with applicable decisions of this Court. To such end it is respectfully submitted that a Writ of Certiorari should be granted and this Court should review the decision of the Supreme Court of the State of Minnesota and reverse it.

Respectfully submitted,

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